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Supreme Court, U.S.
FILED

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

WILLIAM H. BRANDT—PETITIONER

VS.

KING COUNTY DISTRICT COURT
SHORELINE DIVISION—RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO

THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does a judge have immunity from civil suit for tampering with court records when the motive of the judge is to aid one party against another party?

Does "claim preclusion" apply here?

Brandt seeks review of the unpublished memorandum in the Ninth Circuit case No. 97-35745 filed May 20, 1998 under your Rule 10 © pursuant to 28 USC s1254 (1). Your authority is U.S. Constitution, Amendment XIV and 42 USC s1983.

Brandt was sued in a state district court by a collection agency over a disputed medical bill.

When Brandt appealed the judgment, a state judge erased the audiotape record as a shortcut to a new trial under state court rules. The judge's main motive was to cover up corruption and cronyism.

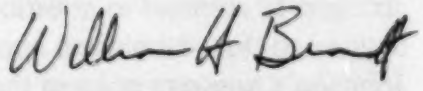
Lost was valuable testimony that incriminated a crony's client.

Brandt first filed in state court naming Court Operations Manager Johnson as the Defendant but did not accuse Johnson of anything. Brandt merely wanted Johnson to respond to questions, and Johnson's title suggested that she was an appropriate respondent. When Johnson's answers pointed the blame to a judge, Brandt tried to amend the title but was dismissed.

Brandt filed suit in federal court, but the District Court dismissed Brandt as paranoid. The Ninth Circuit said that Brandt did not refute "claim preclusion."

The real question here is the limit to judicial immunity. Brandt argues that such immunity serves society only when it applies to judicial decisions made in good faith. Immunity should not shield intentional wrongdoing.

The record was erased not primarily to render a better judgment but to "fix" a case for the judge's friends. But even well-intentioned tampering with court records presents a serious hazard to society. This practice should be permanently proscribed.



WILLIAM H. BRANDT

U.S. District Court
Western District of Washington at Seattle
No. C97-593WD
REPORT AND RECOMMENDATION

I. INTRODUCTION

On April 14, 1997, Plaintiff filed his complaint in this Court, alleging that the Defendant, King County District Court, Shoreline Division, tampered with and destroyed the record of a civil trial held on February 20, 1996. (Doc.#1). Plaintiff seeks $50,000 in damages. Plaintiff concedes in his complaint that he originally filed an action in state court involving the same allegations against the Court Operations Manager, Patricia Johnson, but the action was dismissed with prejudice. (Doc. #1:2). The Court also notes that Plaintiff has filed another action in federal court, related to his current action, which is pending. (See 97-cv-795).

On May 12, 1997, Defendant filed a motion for summary judgment. (Doc.s #6-#7). On May 14, 1997, Defendant filed a motion and amended motion for a protective order. (Docs. #10; #11; #13; #14). On May 19, 1997, Plaintiff filed responses to Defendant's motions (Docs. #17; #18) and also filed a cross-motion to compel. (Doc. #19). On June 5, 1997, Defendant filed a reply in support of summary judgment. (#20).

The Court, having read the motions, the briefs in support and in opposition, and having reviewed the remaining record, recommends that Defendant's motion for summary judgment be GRANTED, that Defendants's motion for a protective order and Plaintiff's motion to compel be DENIED as moot, and that this case be dismissed with prejudice.

II. BACKGROUND

In its motion for summary judgment, Defendant argues that Plaintiff's claims are barred by principles of res judicata because Plaintiff apparently litigated the same issues raised in this case in state court. The facts, which have not been disputed by Plaintiff through affidavits or other responsive documents, were summarized by Defendant as follows:

This case arises out of two separate lawsuits filed in state court. The first case, West Coast Adjustors v. Gee & Brandt, DC No. CV 95-001415; Sup. Ct. No. 96-2-10209-1 SEA ("West Coast Adjustors"), was filed in the Shoreline Division of King County District Court in 1995, and the trial court's decision is on appeal in King County Superior Court. The second case, William H. Brandt v. Patricia M. Johnson, Sup. Ct. No. 96-2-27689-8 SEA ("Brandt v. Johnson"), was filed in King County Superior Court in December 1996. The case was dismissed with prejudice on summary judgment on April 11, 1997.

West Coast Adjustors v. Gee and Brandt

In West Coast Adjustors, an orthopedic services group performed medical services for a Ms. Sylvia Gee. A fee dispute arose between Ms. Gee and the orthopedic group. The group's claim for fees was assigned to the plaintiff in the case, West Coast Adjustors. West Coast Adjustors then initiated the action at issue against Gee and Plaintiff Brandt.

A bench trial was held on February 20, 1996. The trial court judge found Gee and Brandt liable and dismissed their counterclaim. Gee and Brandt appealed. In prosecuting their appeal, Gee and Brandt discovered that the audiotapes from the trial were not available,

apparently due to a malfunction in the recording equipment. As a result, the appeals court dismissed the judgment against them and remanded for a new trial.]

On October 15, 1996, a second trial was held and again judgment was entered against Gee and Brandt.... Unlike the first trial, however, the judgment was for $933.14, or approximately $500 lower than the first judgment.... The judgment also dismissed for a second time Gee and Brandt's State Consumer Protection Act counterclaim.... The next day Gee and Brandt filed a second ...appeal.....The case is currently pending on review in King County Superior Court....

Brandt v. Johnson

On December 16, 1996, Brandt filed in King County Superior Court against Johnson.... According to the four paragraph complaint, Ms. Johnson either failed to make an electronic record from Brandt's first district court trial or "deliberately destroyed [the record] in order to conceal intentional judicial error.

On April 11, 1997, the superior court judge entered a summary judgment order dismissing Brandt's complaint with prejudice. The judge specifically found as follows:

Plaintiff has not met his burden of proving that Defendant Johnson was negligent or committed fraud against Plaintiff. As an additional basis for dismissal, this Court further finds that there is no evidence that the absence of the electronic record resulted in damages because Plaintiff was granted a second trial in the underlying district court action....

See attached copy of Order [of dismissal] dated April 11, 1997. (Doc. #7:2-5).

In opposition to summary judgment, Plaintiff has not disputed Defendant's version of the facts. Instead, Plaintiff claims that a conspiracy is abound and that Defendant is preventing him from determining, in his own word, "whodunit." The upshot of Plaintiff's case in this Court is that the tapes of the first collection trial were fraudulently destroyed:

One doesn't have to be a great detective to realize that the butler probably did it perhaps at the urging of the chauffeur. Or maybe it was vice versa. Possibly a maid helped. In any event, they were all acting in their capacities as servants in the judicial branch of King County government when they harmed the guests and offended against the master (a.k.a. society.) Doc. #18:2.

On June 16, 1997, Plaintiff offered to settle his claims against Defendant, as long as the State of Washington and King County agreed to fund and organize a "Consumer Protection Project" for five million dollars, on which Plaintiff would serve as investment advisor and draw a salary. (Doc.#18). There is no indication in the record that Defendant accepted the settlement offer.

III. DISCUSSION

The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the material facts before the court. Zweig v. Hearst Corp., 521 F.2d 1129 (9th Cir. 1975), cert. den'd, 423 U>S> 1025 (1975). Summary judgment is appropriate if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Swayze v. United States, 785 F.2d 715, 717 (9th Cir. 1986) (citing Fed. R. Civ. P. 56©). The standard provided by Rule 56 requires not only that there be some alleged

factual disputes between the parties, but also that there be genuine issues of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Genuine disputes are those for which the evidence is such that "a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U>S> at 248. Material facts are those which might affects the outcome of the suit under governing law. Id. Defendant has presented affidavits, and other probative evidence, which indicates that there is no genuine issue for trial and that Defendant is entitled to summary judgment as a matter of law.

Defendant argues, in part, that Plaintiff's complaint is barred by res judicata/claim preclusion because of the previous Washington State court decision in Brandt v. Johnson. (Defendant also raised issue preclusion as a defense. Because of the recommended disposition, the Court has not addressed this defense.) In resolving this issue, the Court applies the claim preclusion rules of the State of Washington. Parsons Steel, Inc. v. First Alabama Bank, 474 U.S. 518, 525 (1986). Under the doctrine of claim preclusion, as applied by the Washington State courts, a (1) prior determination on the merits between (2) the same parties or parties in privity (taking into account the "quality" of the parties) (3) regarding the same subject matter and cause of action precludes a second action between the parties. Shoeman v. New York Life, 726 P.2d 1 (Wash. 1986).

Applying these principles, Plaintiff's federal cause of action is precluded by the decision in Brandt v. Johnson, which dismissed Plaintiff's claim regarding the destruction of the tapes on the merits. Plaintiff had the opportunity in the state court to fully litigate his claim

that the tapes were fraudulently destroyed. His claim of fraud and conspiracy in the present complaint, amounting to an alleged due process violation of the Fourteenth Amendment to the United States Constitution, is in substance the same claim Plaintiff made in state court. (See Doc. #7, Ex. B (Plaintiff's state court complaint) (alleging that "loss of that record damaged his case against West Coast Adjustors and others"); Doc. #7, Ex. D (state court order) (noting as an "additional basis for dismissal...that there is no evidence that the absence of the electronic record resulted in damages")). Moreover, as an employee of the Defendant, Ms. Johnson and Defendant are in privity, considering the general allegations of fraud raised by Plaintiff. See Kuhlman v. Thomas, 897 P.2d 365, 367 (Wash. Ct. App. 1995) (noting that privity usually exists based on an employer/employee relationship). In all respects, therefore, Plaintiff's federal complaint is barred because he is attempting to pursue an identical claim, previously dismissed on the merits in state court, in this Court. (In addition to principles of claim preclusion, the Court notes for the record that Plaintiff has not stated a claim against Defendant under 42 USC s1983. Supervisory or vicarious liability is not appropriate in a s1983 action. Moreover, Plaintiff is alleging conspiracy by the Court; as a result, his claim for monetary damages would be barred by judicial immunity because recording and taking transcripts of a court proceeding are inherently within the jurisdiction o court personnel.

IV. CONCLUSION

In light of the foregoing, it appears that there exists no genuine issue for trial and that Defendants are entitled to judgment as a matter of law. Accordingly, the Court recommends that Defendant's motion for summary judgment be GRANTED,....
Dated 20 July 1997 DAVID E. WILSON, Magistrate

Ninth Circuit No. 97-35745 MEMORANDUM
Submitted May 14, 1998
Before: Schroeder, Trott, and Fernandez, Circuit Judges

William Brandt appeals pro se from judgment entered in favor of the defendant in this 42 USC s1983 action. The district court entered judgment upon adopting a recommendation from the U.S. Magistrate that Brandt's action be barred by application of claim preclusion. We have jurisdiction, ... and affirm.

At the district court, Brandt argued that the claim preclusion should not apply because: (1) he had been deprived of the opportunity to fully litigate the merits of his action in front of a fair and neutral tribunal; and (2) the state court action was dismissed prior to his attempt to amend his complaint to name the District Court as a defendant. On appeal, however, Brandt raises only one issue-whether "judges have immunity from civil suit for tampering with court records." He fails to present any facts or legal argument concerning the grounds on which the district court granted summary judgement, claim preclusion. Although pro se appeals are to be liberally construed, Brandt's argument expressed before the district court is deemed abandoned. Wilcox v. Commissioner, 848 F.2d 1007, 1008 n.2 (9th Cir.1988) (issue deemed abandoned where pro se litigant failed to address it in brief). AFFIRMED.